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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 558

THE ATLANTIC REFINING COMPANY, *Petitioner,*

v.

FEDERAL TRADE COMMISSION, *Respondent.*

PETITION FOR REHEARING

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR REHEARING

Petitioner prays that this Court (1) grant rehearing of its order of December 6, 1965, denying the petition for writ of certiorari, and (2) issue a writ of certiorari to review the judgment of the Court of Appeals for the Sixth Circuit in this case as prayed for in the petition filed herein on September 10, 1965.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

Petitioner, The Atlantic Refining Company, in its petition for certiorari filed September 10, 1965, sought review of the judgment of the Court of Appeals for the Sixth Circuit which held (relying on *Simpson* v.

Union Oil Co., 377 U.S. 13 (1964)) that Atlantic's use of the consignment method of distribution in the retail sale of gasoline is illegal under the antitrust laws. On the same day that this Court denied the petition for a writ of certiorari herein, namely, December 6, 1965, it noted probable jurisdiction and agreed to review the decision of the District Court for the Northern District of Illinois in *United States* v. *Arnold, Schwinn & Co.*, No. 611, appeal filed September 24, 1965, which involves the same issue of law presented by Atlantic's petition. In addition, a petition for a writ of certiorari raising the same question is now pending before this Court in another case, *Sun Oil Co.* v. *Federal Trade Commission*, No. 749, petition filed November 17, 1965.

In its jurisdictional statement in *United States* v. *Arnold, Schwinn & Co., supra,* the second question presented by the Government involves the legality of the use of an "agency" or "consignment" method of retail distribution by Schwinn. The Government maintains that the District Court's holding that this distribution method was lawful "is contrary to the recent decision in *Simpson* v. *Union Oil Co.*, 377 U.S. 13, where the Court held that consignment could not be used to fix resale prices on a broad scale in gasoline distribution . . ." (Jurisdictional Statement, p. 19).

The petition in *Sun Oil Co.* v. *Federal Trade Commission, supra,* also raises the question of the legality of consignment selling and the applicability of the *Simpson* holding to that case. The *Sun* case, indeed, presents a factual situation similar in important aspects to that involved in this case.

Manifestly, it would be most appropriate for this Court to grant review in the *Atlantic* case in view of

the fact that it has already accepted review of the same issue in the *Schwinn* case, and has before it the same issue in the pending petition of Sun Oil Company. The acceptance of all three cases raising this issue would give the Court an opportunity to settle and clarify the conflicting lower court decisions interpreting the *Simpson* holding on the use of consignment selling in marketing. These circumstances provide grounds for granting this petition for rehearing. See, *e.g., Pickett* v. *Union Terminal Co.,* 313 U.S. 591, 314 U.S. 704, 315 U.S. 386, 394; *Bowden* v. *City of Fort Smith,* 316 U.S. 584, 589.

CONCLUSION

For the reasons set forth above and in the petition for a writ of certiorari, it is respectfully urged that rehearing be granted, that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Sixth Circuit, and that all three of the above cases be set for consolidated hearing insofar as they present the same basic issue of law.

Respectfully submitted,

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Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

EDWARD F. HOWREY
Counsel for Petitioner.

Dated: December 29, 1965